IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A. No. 275 of 2007

DATE OF DECISION: 14.9.2007

The Commissioner of Income Tax, Karnal

…Appellant

Versus

M/s WIZ Crafts Bath Furnishing

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Yogesh Putney, Advocate,
for the appellant-revenue.

JUDGMENT

M.M. KUMAR, J.

This is revenue's appeal under Section 260A of the Income-tax Act, 1961 (for brevity, 'the Act'), against order dated 8.6.2006, passed by the Income Tax Appellate Tribunal, Delhi Bench, 'SMC', New Delhi (for brevity, 'the Tribunal), in I.T.A. No. 1217/Del/2006, in respect of assessment year 2001-02. It is claimed that the following substantial questions of law would arise for determination of this Court:-

1. Whether on the facts and in the circumstances of the case, the ITAT was right in law in confirming the order of the CIT (Appeals) directing the Assessing Officer to allow deduction under Section 80IB on the amount of duty draw back received by the assessee which cannot be termed

as income "derived from" an industrial undertaking as held by Hon'ble the Supreme Court in the case of CIT v. Sterling Foods, (1999) 237 ITR 579 (SC)?

2. Whether on the facts and in the circumstances of the case, the ITAT is right in law in allowing deduction under Section 80IB of the Income Tax Act, 1961, on the total business profits which includes duty draw back/export incentives without considering the provisions of Section 80IB under which deduction is allowable only from the income derived from the industrial undertaking having direct nexus with the activity of industrial undertaking?

We have issued dasti notice to the assessee-respondent and according to the office report service is complete. Despite service no one has put in appearance on behalf of the assessee-respondent, therefore, we proceeded to hear the matter.

After hearing learned counsel for the appellant and perusing the record we find that the matter is not *res integra*, inasmuch as, the issue raised in the instant appeal has already been settled by Hon'ble the Supreme Court in the case of Sterling Foods case (supra). We have already allowed appeals of the revenue involving similar questions of law by following the judgment of Hon'ble the Supreme Court rendered in the case of Sterling Foods

(supra), being I.T.A. Nos. 495 and 496 of 2006, decided on 26.7.2007.

In view of above, instant appeal is allowed in terms of our judgment dated 26.7.2007, in I.T.A. Nos. 495 of 2006 (The Commissioner of Income-tax, Karnal v. Sh. Lakhwinder Singh, Proprietor M/s G.S. Exports, Panipat) and 496 of 2006 (The Commissioner of Income-tax, Karnal v. M/s G.S. Exports, Panipat). Accordingly, the order dated 8.6.2006, passed by the Tribunal is set aside and that of the Assessing Officer, dated 21.11.2005 (A-1) is restored. However, there shall be no order as to costs.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

September 14, 2007
Pkapoor